

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.Nos.16498 & 16946 of 2019
& W.M.P.Nos.16138, 16139 of 2019

1. P.Gopalakrishnan,
S/o.A.M.Palanisamy,
No.1/41, Ayyampalayam,
Pudupalayam, Chennaimalai, Perundurai,
Erode District-638 051
... Petitioner in W.P.No.16498 of 2019
2. P.Thangavel,
S/o.Palanisamy Gounder,
No.34, Thippampalayam,
Thippampalayam Post- 638 751.
Uthukuli Via, Perundurai Taluk,
Erode District.
... Petitioner in W.P.No.16946 of 2019
/versus/
W.P.No.16498 of 2019
1. The Assistant Director,
Handlooms and Textiles,
No.426, Bhavani Main Road,
Ashokapuram,
Erode-4.
2. The Textile Control Officer/The Field Officer,
Erode.
3. A.A.No.128, Pallakkattupudur Primary Handloom
Weavers Co-operative Society,
Rep. by its Secretary,
Chennimalai, Perundurai Taluk,
Erode District.
4. P.Govindaraj,
S/o.Ponnusamy,
No.10/9, Pallakattu Pudur, Thoppalayam Post,
Chennimalai.

5. P.Thangavel,
S/o.Palanisamy Gounder,
No.3/34, Thippampalayam Post, Chennimalai.

6. K.Ganeshan,
S/o.Kuppusamy,
Pallakattu Pudur, Thoppalayam Post,
Chennimalai.

7. C.Selvaraj,
S/o.Chenni,
No.85, Echupatti,
Thoppupalayam Post, Chennimalai.

8. S.Annakodi,
W/o.Subramani,
No.48, Pallakattu Pudur,
Thoppupalayam Post,
Chennimalai.

9. P.Thangamani,
W/o.Palanisamy,
Peikkadu, Kattur Road,
Chennimalai.

... Respondents in W.P.No.16498 of 2019

W.P.No.16946 of 2019

1. The Assistant Director of Handlooms/
Textile Control Officer,
No.426, Bhavani Main Road, Ashokapuram, Erode.

2. P.Gopalakrishnan,
Ex-President,
A.A.No.128, Pallakattupudur Primary Handloom
Weavers Cooperative Society, Pallakattupudur, Kattur Road,
Chennimalai, Perundurai Taluk,
Erode District.

... Respondents in W.P.No.16946 of 2019

Prayer in W.P.No.16498 of 2019:- Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of order in Na.Ka.No.7692/2019/E, dated 31.05.2019 passed by the 1st respondent and consequential Resolution No.1, dated 07.06.2019 on the file of 3rd respondent and quash the same and consequently direct the respondents to permit the petitioner to discharge his functions as a President of 3rd Respondent Society.

Prayer in W.P.No.16946 of 2019:- Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to remove the 2nd respondent from the post of President from the AA 128, Pallakattupudur Primary Handloom Weavers Co-operative Society, Pallakattupudur, Kattur Road, Chennimalai, Perundurai Taluk, Erode District on the basis of the resolution passed by the Five Directors out of Seven Directors in the Special Board of Directors meeting held on 07.06.2019.

W.P.No.16498 of 2019:

For Petitioner : Mr.N.Ponraj
For R1 to R3 : Mr.L.P.Shanmugasundaram
Special Government Pleader
For R5 : Mr.C.Prakasam
W.P.No.16946 of 2019
For Petitioner : C.Prakasam
For R1 : Mr.L.P.Shanmugasundaram
Special Government Pleader
For R2 : Mr.N.Ponraj

C O M M O N O R D E R

These two Writ Petitions centers around the same issue namely removal of President of the Co-operative Society through no confidence motion.

2. Mr.P.Gopalakrishnan, writ petitioner in W.P.No.16498 of 2019 was elected as one of the Board of Directors to the A.A. 128, Pallakkattupudur Primary Handloom Weavers Co-operative Society. The Board consist of seven Directors. Mr.P.Gopalakrishnan, who is one among them was elected by the Board members as President of the Society. Since some of the members were not satisfied with the functioning of Mr.P.Gopalakrishnan as President, had made a representation to the Assistant Director, Handlooms & Textile to convene a meeting to move no confidence motion against him. The said complaint dated 31.05.2019 was taken for consideration by the Assistant Director, Handlooms and Textiles. On the very same day, he has passed the order fixing 07.06.2019 as the date of meeting. Mr.Sakthivel, Textile Control Officer/Field Officer, was appointed as Special Officer to conduct the meeting on

07.06.2019. Accordingly, Special meeting was convened. Five members participated and the no confidence motion was passed unanimously on that day.

3. Aggrieved by the action of Assistant Director for not affording an opportunity to him before convening the meeting, Mr.P.Gopalakrishnan has approached this Court in W.P.No.16498 of 2019 contended that before convening the meeting to remove no confidence motion under Rules 62(3) of Tamil Nadu Co-operative Society Act opportunity should have been given to him to meet out the allegations made by the members. Whereas, Mr.P.Thangavel, who is one of the Directors of the Board has filed W.P.No.16946 of 2019 seeking mandamus to direct the Assistant Director of Handlooms and Textiles, to act upon the resolution dated 07.06.2009 expressing no confidence motion on the President "Mr.P.Gopalakrishnan".

4. Heard the Learned Counsel for the Petitioners and the Learned Counsel for the Respondents

5. Rule 62 of Tamil Nadu Co-operative Society Rules, 1988, contemplates removal of an elected Office bearers, which reads as below:

Removal of an elected office-bearer :-

(1) An elected office-bearer may be removed by a resolution expressing no confidence in him passed in a special meeting of the board.

(2) No special meeting of the board shall be convened unless a requisition in writing signed by not less than two-third of existing members of the board of the society at the time of such requisition who are eligible to vote at elections is presented to the Registrar.

(3) As soon as such a requisition is received, the Registrar shall communicate a copy of the requisition to the office-bearer concerned, calling upon him to make his representation, if any, within such time as may be specified by him. The Registrar shall, within thirty days from the date of receipt of such requisition arrange to convene a special meeting of the board of the society, for consideration of the resolution expressing no confidence in the office-bearer for which not less than three clear days' notice shall be given. A copy or gist of the requisition and of the representation, if any, received from the office-bearer concerned shall also be sent to

the members along with the notice for the special meeting of the board.

6. Mr.P.Gopalakrishnan, who is the one of the elected Office bearers of the Society sought to be removed by way of resolution by other members. No doubt, five out of seven members have supported the no confidence motion. However, before convening the meeting, the Assistant Director, Handlooms & Textiles, ought to have ensure the procedure contemplated under Rule 62 of Tamil Nadu Co-operative Society Rules is scrupulously followed, since patently the procedure has been violated, the meeting convened on 07.06.2019 and the resolution passed thereof is illegal and non est in law.

7. From the records, this Court finds that the Assistant Director, Handlooms & Textiles, has received the complaint and request for convening Special meeting on 31.05.2019 and on very same day, he has fixed the date of meeting and appointed Mr.Sakthivel, Textile Control Officer/Field Officer, Erode to oversee the meetings. So, the Principal of natural Justice not been followed and the procedure contemplated under Rule 62(3) has totally been ignored.

8. Under such circumstances, the order of the 1st respondent/Assistant Director of Handlooms & Textiles, dated 31.05.2019 permitting the members to convene meeting on 07.06.2019 is quashed. Consequently, the resolution passed on 07.06.2019 declared as illegal and void.

9. If the Assistant Director of Handlooms has received any complaint and request for convening the meeting to discuss no confidence motion, same should be dealt as per the procedure contemplated under Rules 62 of Tamil Nadu Co-operative Society Act, 1988. The respondents 4 to 9 (in W.P.No.16498 of 2019) are at liberty to give further representation, if necessary.

10. With these observations;
(i) The Writ Petitioner in W.P.No.16498 of 2019 is Allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(ii). The Writ Petitioner in W.P.No.16946 of 2019 is disposed of. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To,

1. The Assistant Director,
Handlooms and Textiles,
No.426, Bhavani Main Road,
Ashokapuram, Erode-4.
2. The Textile Control Officer/The Field Officer,
Erode.

+1cc to Mr.C.Prakasam, Advocate Sr.50077
+1cc to Mr.N.Ponraj, Advocate Sr.49394
+1cc to Mr.L.P.Shanmugasundaram, Advocate Sr.50057
+1cc to the Government Pleader Sr.50094 & 50095

W.P.Nos.16498 & 16946 of 2019

ssd[col]
srg 19/07/2019



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